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SENATE BILL 35

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Clinton D. Harden

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION
AUTHORITY; ADDING THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION
AUTHORITY TO THE LIST OF QUALIFIED ENTITIES FOR THE PURPOSES OF
THE PUBLIC PROJECT REVOLVING FUND; AUTHORIZING THE NEW MEXICO
FINANCE AUTHORITY TO ISSUE AND SUPPORT BONDS AND TO EXTEND
CREDIT ENHANCEMENTS FOR RENEWABLE ENERGY PROJECTS; EXEMPTING
CERTAIN PROPERTY FROM TAXATION; TRANSFERRING THE RENEWABLE
ENERGY TRANSMISSION BONDING FUND AND THE RENEWABLE ENERGY
TRANSMISSION AUTHORITY OPERATIONAL FUND FROM THE STATE TREASURY
TO THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY;
AMENDING THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY
ACT WITH REGARD TO THE DEPOSIT OF FUNDS AND THE ISSUANCE OF
BONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 Section 1. A new section of the New Mexico Finance
2 Authority Act is enacted to read:

3 "[NEW MATERIAL] BONDS FOR RENEWABLE ENERGY TRANSMISSION
4 PROJECTS.--The authority may issue bonds on behalf of renewable
5 energy electrical transmission and storage projects to be
6 entered into pursuant to the New Mexico Renewable Energy
7 Transmission Authority Act."

8 Section 2. Section 6-21-3 NMSA 1978 (being Laws 1992,
9 Chapter 61, Section 3, as amended) is amended to read:

10 "6-21-3. DEFINITIONS.--As used in the New Mexico Finance
11 Authority Act:

12 A. "authority" means the New Mexico finance
13 authority;

14 B. "bond" means any bonds, notes, certificates of
15 participation or other evidence of indebtedness;

16 C. "bondholder" or "holder" means a person who is
17 the owner of a bond, whether registered or not;

18 D. "emergency public project" means a public
19 project:

20 (1) made necessary by an unforeseen occurrence
21 or circumstance threatening the public health, safety or
22 welfare; and

23 (2) requiring the immediate expenditure of
24 money that is not within the available financial resources of
25 the qualified entity as determined by the authority;

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1 E. "public project" means the acquisition,
2 construction, improvement, alteration or reconstruction of
3 assets of a long-term capital nature by a qualified entity,
4 including land; buildings; water rights; water, sewerage and
5 waste disposal systems; streets; airports; municipal utilities;
6 parking facilities; and machinery, furniture and equipment.
7 "Public project" includes all proposed expenditures related to
8 the entire undertaking. "Public project" also includes the
9 acquisition, construction or improvement of real property,
10 buildings, facilities and other assets by the authority for the
11 purpose of leasing the property;

12 F. "qualified entity" means the state or an agency
13 or institution of the state or a county; municipality; school
14 district; two-year public post-secondary educational
15 institution; land grant corporation; acequia association;
16 public improvement district; federally chartered college
17 located in New Mexico; intercommunity water or natural gas
18 supply association or corporation; special district or
19 community water association; nonprofit foundation or other
20 support organization affiliated with a public university,
21 college or other higher educational institution located in New
22 Mexico; ~~[or]~~ an Indian nation, tribe or pueblo located wholly
23 or partially in New Mexico, including a political subdivision
24 or a wholly owned enterprise of an Indian nation, tribe or
25 pueblo or a consortium of those Indian entities; or the New

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1 Mexico renewable energy transmission authority; and

2 G. "security" or "securities", unless the context
3 indicates otherwise, means bonds, notes or other evidence of
4 indebtedness issued by a qualified entity or leases or
5 certificates or other evidence of participation in the lessor's
6 interest in and rights under a lease with a qualified entity
7 and that are payable from taxes, revenues, rates, charges,
8 assessments or user fees or from the proceeds of funding or
9 refunding bonds, notes or other evidence of indebtedness of a
10 qualified entity or from certificates or evidence of
11 participation in a lease with a qualified entity."

12 Section 3. Section 6-21-6 NMSA 1978 (being Laws 1992,
13 Chapter 61, Section 6, as amended) is amended to read:

14 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
15 ADMINISTRATION.--

16 A. The "public project revolving fund" is created
17 within the authority. The fund shall be administered by the
18 authority as a separate account, but may consist of such
19 subaccounts as the authority deems necessary to carry out the
20 purposes of the fund. The authority may establish procedures
21 and adopt rules as required to administer the fund in
22 accordance with the New Mexico Finance Authority Act.

23 B. Except as otherwise provided in the New Mexico
24 Finance Authority Act, money from payments of principal of and
25 interest on loans and payments of principal of and interest on
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1 securities held by the authority for public projects authorized
2 specifically by law shall be deposited in the public project
3 revolving fund. The fund shall also consist of any other money
4 appropriated, distributed or otherwise allocated to the fund
5 for the purpose of financing public projects authorized
6 specifically by law.

7 C. Money appropriated to pay administrative costs,
8 money available for administrative costs from other sources and
9 money from payments of interest on loans or securities held by
10 the authority, including payments of interest on loans and
11 securities held by the authority for public projects authorized
12 specifically by law, that represents payments for
13 administrative costs shall not be deposited in the public
14 project revolving fund and shall be deposited in a separate
15 account of the authority and may be used by the authority to
16 meet administrative costs of the authority.

17 D. Except as otherwise provided in the New Mexico
18 Finance Authority Act, money in the public project revolving
19 fund is appropriated to the authority to pay the reasonably
20 necessary costs of originating and servicing loans, grants or
21 securities funded by the fund and to make loans or grants and
22 to purchase or sell securities to assist qualified entities in
23 financing public projects in accordance with the New Mexico
24 Finance Authority Act and pursuant to specific authorization by
25 law for each project.

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1 E. Money in the public project revolving fund not
2 needed for immediate disbursement, including money held in
3 reserve, may be deposited with the state treasurer for
4 short-term investment pursuant to Section 6-10-10.1 NMSA 1978
5 or may be invested in direct and general obligations of or
6 obligations fully and unconditionally guaranteed by the United
7 States, obligations issued by agencies of the United States,
8 obligations of this state or any political subdivision of the
9 state, interest-bearing time deposits, commercial paper issued
10 by corporations organized and operating in the United States
11 and rated "prime" quality by a national rating service, other
12 investments permitted by Section 6-10-10 NMSA 1978 or as
13 otherwise provided by the trust indenture or bond resolution,
14 if money is pledged for or secures payment of bonds issued by
15 the authority.

16 F. The authority shall establish fiscal controls
17 and accounting procedures that are sufficient to assure proper
18 accounting for public project revolving fund payments,
19 disbursements and balances.

20 G. Money on deposit in the public project revolving
21 fund may be used to make interim loans for a term not exceeding
22 two years to qualified entities for the purpose of providing
23 interim financing for any project approved or funded by the
24 legislature.

25 H. Money on deposit in the public project revolving
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1 fund may be used to acquire securities or to make loans to
2 qualified entities in connection with the small loan program.
3 As used in this subsection, "small loan program" means the
4 program of the authority designed to provide financing for
5 public projects, including projects financed by the New Mexico
6 renewable energy transmission authority or financed by the
7 authority on its behalf, in amounts not to exceed one million
8 dollars (\$1,000,000) per project. A public project financed
9 pursuant to the small loan program shall not require specific
10 authorization by law.

11 I. Money on deposit in the public project
12 revolving fund may be designated as a reserve for any bonds
13 issued by the authority, including bonds payable from sources
14 other than the public project revolving fund, and the authority
15 may covenant in any bond resolution or trust indenture to
16 maintain and replenish the reserve from money deposited in the
17 public project revolving fund after issuance of bonds by the
18 authority.

19 J. Money on deposit in the public project revolving
20 fund may be used to purchase bonds issued by the authority,
21 which are payable from any designated source of revenues or
22 collateral, or to purchase bonds issued by the New Mexico
23 renewable energy transmission authority. Purchasing and
24 holding the bonds in the public project revolving fund shall
25 not, as a matter of law, result in cancellation or merger of

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1 the bonds notwithstanding the fact that the authority as the
2 issuer of the bonds is obligated to make the required debt
3 service payments and the public project revolving fund held by
4 the authority is entitled to receive the required debt service
5 payments.

6 K. Money on deposit in the public project revolving
7 fund may be used to capitalize other financing programs of the
8 authority or of the New Mexico renewable energy transmission
9 authority authorized by law, either directly or from proceeds
10 of bonds issued by the authority and secured by money in the
11 public project revolving fund."

12 Section 4. Section 6-21-6.7 NMSA 1978 (being Laws 2003,
13 Chapter 341, Section 5, as amended) is amended to read:

14 "6-21-6.7. CREDIT ENHANCEMENT ACCOUNT CREATED--USE OF
15 ACCOUNT--RELEASE OF MONEY TO THE GENERAL FUND.--

16 A. The "credit enhancement account" is created as a
17 separate account within the authority for use only as provided
18 in this section.

19 B. All cigarette tax proceeds distributed each
20 month to the authority pursuant to Subsection G of Section
21 7-1-6.11 NMSA 1978 shall be deposited in the credit enhancement
22 account.

23 C. Amounts deposited in the credit enhancement
24 account may be pledged irrevocably as additional security for
25 the payment of the principal, interest, premiums and expenses

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1 on bonds issued by the authority or the New Mexico renewable
2 energy transmission authority for:

3 (1) designing, constructing, equipping and
4 furnishing additions and improvements to the university of New
5 Mexico hospital and the cancer research and treatment center at
6 the university of New Mexico health sciences center; ~~and~~

7 (2) land acquisition and the planning,
8 designing, construction and equipping of department of health
9 facilities or improvements to such facilities; and

10 (3) financing and entering into electrical
11 transmission and storage projects authorized pursuant to the
12 New Mexican Renewable Energy Transmission Authority Act.

13 D. The authority shall determine monthly upon
14 receipt of cigarette tax proceeds if the individual amounts of
15 cigarette tax proceeds distributed pursuant to Subsection E or
16 Subsection F, respectively, of Section 7-1-6.11 NMSA 1978 are
17 sufficient to meet the monthly amount required for immediate
18 payment or designation for payment of principal, interest,
19 premiums and expenses on bonds additionally secured by the
20 credit enhancement account. Any insufficient amount shall be
21 paid immediately from the credit enhancement account. A
22 payment from the credit enhancement account shall be reimbursed
23 in succeeding months from the individual amount of cigarette
24 tax proceeds distributed pursuant to Subsection E or Subsection
25 F, as applicable, of Section 7-1-6.11 NMSA 1978 in excess of

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1 the amount required for immediate payment or designation for
2 payment of principal, interest, premiums and expenses on bonds.
3 All money in the credit enhancement account in excess of the
4 monthly amount required for immediate payment or designation
5 for payment of principal, interest, premiums and expenses on
6 bonds shall be transferred monthly by the authority to the
7 general fund.

8 E. Upon payment of all principal, interest,
9 premiums and expenses on bonds additionally secured by a pledge
10 of amounts deposited in the credit enhancement account, the
11 authority shall certify to the secretary of taxation and
12 revenue that all obligations for bonds have been fully
13 discharged and shall direct the secretary of taxation and
14 revenue and the state treasurer to cease distributing cigarette
15 tax proceeds to the authority pursuant to Subsection G of
16 Section 7-1-6.11 NMSA 1978 and to distribute those cigarette
17 tax proceeds to the general fund.

18 F. Any law authorizing the imposition, collection
19 or distribution of the cigarette tax or that affects the
20 cigarette tax shall not be amended, repealed or otherwise
21 directly or indirectly modified so as to impair or reduce debt
22 service coverage for any outstanding revenue bonds that may be
23 secured by a pledge of those cigarette tax proceeds distributed
24 to the credit enhancement account, unless the revenue bonds
25 have been discharged in full or provisions have been made for a

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1 full discharge."

2 Section 5. Section 7-36-3 NMSA 1978 (being Laws 1975,
3 Chapter 218, Section 1, as amended by Laws 2006, Chapter 90,
4 Section 1 and by Laws 2006, Chapter 92, Section 1) is amended
5 to read:

6 "7-36-3. INDUSTRIAL REVENUE BOND, POLLUTION CONTROL BOND,
7 ~~[AND]~~ ECONOMIC DEVELOPMENT BOND AND RENEWABLE ENERGY
8 TRANSMISSION PROJECT PROPERTY--HEALTH-RELATED EQUIPMENT--TAX
9 STATUS.--

10 A. Property interests of a lessee in project
11 property held under a lease from a ~~[county or a municipality]~~
12 New Mexico governmental entity under authority of an industrial
13 revenue bond or pollution control revenue bond act ~~[or]~~, the
14 Statewide Economic Development Finance Act or the New Mexico
15 Renewable Energy Transmission Authority Act are exempt from
16 property taxation for as long as there is an outstanding bonded
17 indebtedness under the terms of the revenue bonds issued for
18 the acquisition of the project property, but in no event for a
19 period of more than thirty years from the date of execution of
20 the first lease of the project to the lessee by the county or
21 municipality or in the case of a project financed pursuant to
22 the New Mexico Renewable Energy Transmission Authority Act, not
23 to exceed thirty years from the date of commencement of project
24 construction.

25 B. Property interests of a person, other than a

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1 public utility, arising out of the purchase of a project
2 authorized by the Industrial Revenue Bond Act, the County
3 Industrial Revenue Bond Act, the Pollution Control Revenue Bond
4 Act, ~~[or]~~ the Statewide Economic Development Finance Act or the
5 New Mexico Renewable Energy Transmission Authority Act are
6 exempt from property taxation for as long as the project
7 purchaser remains liable to the project seller for any part of
8 the purchase price or in the case of a project financed
9 pursuant to the New Mexico Renewable Energy Transmission
10 Authority Act, for as long as the project is operated by the
11 developer or project entity, but not to exceed thirty years
12 from the date of execution of the sale agreement.

13 C. Property interests of a participating health
14 facility in health-related equipment purchased, acquired,
15 leased, financed or refinanced with the proceeds of bonds
16 issued under the Hospital Equipment Loan Act are exempt from
17 property taxation for as long as the participating health
18 facility remains liable for any amount under any lease, loan or
19 other agreement securing the bonds, but not to exceed thirty
20 years from the date the bonds were issued for the health-
21 related equipment.

22 D. The exemptions from property taxation under this
23 section are not cumulative; provided, however, that the
24 exemptions may be applied consecutively if subsequent
25 exemptions relate to the financing of a new project or new

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1 health-related equipment."

2 Section 6. Section 62-16A-5 NMSA 1978 (being Laws 2007,
3 Chapter 3, Section 5) is amended to read:

4 "62-16A-5. RENEWABLE ENERGY TRANSMISSION BONDS--
5 APPROPRIATION OF PROCEEDS.--

6 A. The authority is authorized to issue and sell
7 revenue bonds, known as "renewable energy transmission bonds",
8 payable [~~solely~~] from the renewable energy transmission bonding
9 fund and other sources as the authority may designate, in
10 compliance with the New Mexico Renewable Energy Transmission
11 Authority Act, for the purpose of entering into a project when
12 the authority determines that the project is needed.

13 B. The net proceeds from the bonds are appropriated
14 to the authority for the purpose of financing or acquiring
15 eligible facilities."

16 Section 7. Section 62-16A-6 NMSA 1978 (being Laws 2007,
17 Chapter 3, Section 6) is amended to read:

18 "62-16A-6. RENEWABLE ENERGY TRANSMISSION BONDING FUND
19 CREATED--MONEY IN THE FUND PLEDGED.--

20 A. The "renewable energy transmission bonding fund"
21 is created in the [~~state treasury~~] authority. The fund shall
22 consist of revenues received by the authority from operating or
23 leasing eligible facilities, fees and service charges collected
24 and, if the authority has provided financing for eligible
25 facilities, money from payments of principal and interest on

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1 loans. Earnings of the fund shall be credited to the fund.
2 Balances in the fund at the end of any fiscal year shall remain
3 in the fund, except as provided in this section.

4 B. Money in the fund shall be deposited in a bank
5 designated by the authority in an account or accounts as the
6 authority may establish. Money in accounts shall be withdrawn
7 on the order of persons whom the authority may authorize. All
8 deposits of money shall be secured in such manner as the
9 authority may determine. The state auditor and the state
10 auditor's legally authorized representatives may periodically
11 examine the accounts and books of the authority, including its
12 receipts, disbursements, contracts, leases, sinking funds,
13 investments and any other records and papers relating to its
14 financial standing. The authority shall pay a reasonable fee
15 for the examination as determined by the state auditor.

16 [~~B.~~] C. Money in the renewable energy transmission
17 bonding fund is first pledged for the payment of principal and
18 interest on all bonds issued pursuant to the New Mexico
19 Renewable Energy Transmission Authority Act. Money in the fund
20 is appropriated to the authority for the purpose of paying debt
21 service, including redemption premiums, on the bonds and the
22 expenses incurred in the issuance, payment and administration
23 of the bonds.

24 [~~C.~~] D. On the last day of January and the last day
25 of July of each year, the authority shall estimate the amount

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1 needed to make debt service and other payments during the next
2 twelve months from the renewable energy transmission bonding
3 fund on the bonds plus the amount that may be needed for any
4 required reserves. The authority shall transfer to the
5 renewable energy transmission authority operational fund any
6 balance in the renewable energy transmission bonding fund above
7 the estimated amounts.

8 ~~[D.]~~ E. Bonds issued pursuant to the New Mexico
9 Renewable Energy Transmission Authority Act shall be payable
10 ~~[solely]~~ from the renewable energy transmission bonding fund
11 or, with the approval of the bondholders, such other special
12 funds as may be provided by law and do not create an obligation
13 or indebtedness of the state within the meaning of any
14 constitutional provision. No breach of any contractual
15 obligation incurred pursuant to that act shall impose a
16 pecuniary liability or a charge upon the general credit or
17 taxing power of the state, and the bonds are not general
18 obligations for which the state's full faith and credit is
19 pledged.

20 ~~[E.]~~ F. The state does hereby pledge that the
21 renewable energy transmission bonding fund shall be used only
22 for the purposes specified in this section and pledged first to
23 pay the debt service on the bonds issued pursuant to the New
24 Mexico Renewable Energy Transmission Authority Act. The state
25 further pledges that any law requiring the deposit of revenues

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1 in the renewable energy transmission bonding fund or
2 authorizing expenditures from the fund shall not be amended or
3 repealed or otherwise modified so as to impair the bonds to
4 which the renewable energy transmission bonding fund is
5 dedicated as provided in this section."

6 Section 8. Section 62-16A-9 NMSA 1978 (being Laws 2007,
7 Chapter 3, Section 9) is amended to read:

8 "62-16A-9. PROCEDURE FOR SALE OF RENEWABLE ENERGY
9 TRANSMISSION BONDS.--

10 A. Bonds shall be sold by the authority at such
11 times and in such manner as the authority may elect, either at
12 private sale for a negotiated price or to the highest bidder at
13 public sale for cash at [~~not less than~~] par, above par or below
14 par and accrued interest.

15 B. In connection with any public sale of the bonds,
16 the authority shall publish a notice of the time and place of
17 sale in a newspaper of general circulation in the state and
18 also in a recognized financial journal outside the state. The
19 publication shall be made once each week for two consecutive
20 weeks prior to the date fixed for such sale, the last
21 publication to be two business days prior to the date of sale.
22 The notice shall specify the amount, denomination, maturity and
23 description of the bonds to be offered for sale and the place,
24 day and hour at which sealed bids therefore shall be received.
25 All bids, except those of the state, shall be accompanied by a

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1 deposit of two percent of the principal amount of the bonds.
2 Deposits of unsuccessful bidders shall be returned upon
3 rejection of the bid. At the time and place specified in such
4 notice, the authority shall open the bids in public and shall
5 award the bonds, or any part thereof, to the bidder or bidders
6 offering the best price. The authority may reject any or all
7 bids and readvertise.

8 C. The authority may sell a bond issue, or any part
9 thereof, to the state or to one or more investment bankers or
10 institutional investors at private sale."

11 Section 9. Section 62-16A-10 NMSA 1978 (being Laws 2007,
12 Chapter 3, Section 10) is amended to read:

13 "62-16A-10. NEW MEXICO RENEWABLE ENERGY TRANSMISSION
14 AUTHORITY ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS
15 ARE LEGAL INVESTMENTS.--

16 A. The New Mexico Renewable Energy Transmission
17 Authority Act is, without reference to any other act of the
18 legislature, full authority for the issuance and sale of
19 renewable energy transmission bonds, which bonds shall have all
20 the qualities of investment securities under the Uniform
21 Commercial Code and shall not be invalid for any irregularity
22 or defect or be contestable in the hands of bona fide
23 purchasers or holders thereof for value.

24 B. The bonds are legal investments for any person
25 or board charged with the investment of any public funds,

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1 including, without limitation, the state investment council
2 when making investments on behalf of the state permanent fund
3 or the severance tax permanent fund or other funds in its
4 control and the state treasurer when making investments of the
5 general fund or other funds in the state treasurer's control
6 and are acceptable as security for any deposit of public
7 money."

8 Section 10. Section 62-16A-12 NMSA 1978 (being Laws 2007,
9 Chapter 3, Section 12) is amended to read:

10 "62-16A-12. RENEWABLE ENERGY TRANSMISSION BONDS TAX
11 EXEMPT.--All renewable energy transmission bonds are exempt
12 from taxation by the state or any of its political
13 subdivisions. Additionally, all mortgages or other security
14 instruments executed as security for the bonds, all personal or
15 real property acquired through use of bond proceeds, all lease
16 agreements made pursuant to the bonds and revenue derived from
17 any lease or sale of an eligible facility developed pursuant to
18 the bonds are exempt from all taxation by the state or any of
19 its political subdivisions."

20 Section 11. Section 62-16A-13 NMSA 1978 (being Laws 2007,
21 Chapter 3, Section 13) is amended to read:

22 "62-16A-13. RENEWABLE ENERGY TRANSMISSION AUTHORITY
23 OPERATIONAL FUND.--The "renewable energy transmission authority
24 operational fund" is created in the [~~state treasury~~] authority.
25 The fund shall consist of money appropriated and transferred to

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1 the fund. Money in the fund shall be deposited in a bank
2 designated by the authority in an account or accounts as the
3 authority may establish. Money in accounts shall be withdrawn
4 on the order of persons whom the authority may authorize. All
5 deposits of money shall be secured in such manner as the
6 authority may determine. The state auditor and the state
7 auditor's legally authorized representatives may periodically
8 examine the accounts and books of the authority, including its
9 receipts, disbursements, contracts, leases, sinking funds,
10 investments and any other records and papers relating to its
11 financial standing. The authority shall pay a reasonable fee
12 for the examination as determined by the state auditor.

13 Earnings from investment of the fund shall be credited to the
14 fund. Money in the fund is appropriated to the authority for
15 the purpose of carrying out the provisions of the New Mexico
16 Renewable Energy Transmission Authority Act. Any unexpended or
17 unencumbered balance remaining at the end of a fiscal year
18 shall not revert. [~~Disbursements from the fund shall be made~~
19 ~~upon warrants drawn by the secretary of finance and~~
20 ~~administration pursuant to vouchers signed by the executive~~
21 ~~director of the authority.]"~~

22 Section 12. TEMPORARY PROVISION--TRANSFER OF MONEY AND
23 RECORDS.--On the effective date of this act:

24 A. all money in the renewable energy transmission
25 bonding fund and records relating to the renewable energy

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1 transmission bonding fund in the state treasury shall be
2 transferred to the renewable energy transmission bonding fund
3 in the New Mexico renewable energy transmission authority; and

4 B. all money in the renewable energy transmission
5 authority operational fund and records relating to the
6 renewable energy transmission authority operational fund in the
7 state treasury shall be transferred to the renewable energy
8 transmission authority operational fund in the New Mexico
9 renewable energy transmission authority.

10 Section 13. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2009.